IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10594 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARSHADKUMAR VIRENDRABHAI JAIN

Versus

COLLECTOR & DIST. MAGISTRATE

Appearance:

1. Special Civil Application No. 10594 of 2001

MR NM KAPADIA for Petitioner No. 1

RULE SERVED BY DS for Respondents No. 1,2,4-3

MS PJ DAVAWALA for Respondent No. 2

MR SS PATEL, AGP for Respondent No. 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 13/12/2001

ORAL JUDGEMENT

By way of this Special Civil Application under

Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 17-10-2001 passed by the District Magistrate, Ahmedabad, in exercise of powers under Section 3(2)) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

2. Mr.N.M.Kapadia, learned advocate for the petitioner has concentrated his argument on the point of delay in passing the detention order by contending that date of search carried out by the authority is 5-5-2001 and 26-6-2001 in presence of panchas and panchnama to that effect has been prepared by the authority while the order of detention has been passed on 17-10-2001 and hence, there is a delay in passing the order. He has drawn my attention towards page 6, ground No.8 of the petition wherein he has raised specific contention regarding the same. He has further contended that though affidavit-in-reply has been filed by the Deputy Secretary to the Government, Food, Civil Supplies & Consumer Affairs Department, Gandhinagar as well as the Central Government, the said contention has not been dealt with by them and hence, order of detention is bad. Mr.Kapadia has relied upon the case of Pradeep Nilkanth Paturkar Vs. S. Ramamurthi and others, AIR 1994 S.C. 656.

3. Learned AGP, Mr.Patel has drawn my attention that in that case, delay is of five months whereas in the present case, there is a delay of more than three months only. Mr.Patel has argued that everything has been mentioned in the order of detention and, therefore, it is not required to be explained by way of affidavit.

4. I do not agree with the argument advanced by learned AGP, Mr.Patel. Facts remain that there is a delay in passing the order and and whether the delay is of three months or five months is not the question to be considered, but explanation of said delay by filing an affidavit is to be considered. Here, the affidavits filed by the State and the Central Government do not explain the said contention raised by the petitioner in ground No.8 of the petition and hence, it remains remains answered and uncontroverted. Moreover, the detaining authority has not filed any affidavit though sufficient time has been granted to it. In short, the contention which has been raised by the petitioner has been indirectly accepted by the detaining authority. Reliance is placed on a decision of a Division Bench of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors., 2000(1) G.L.H. 393 wherein it was held as under:

"Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detention is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

5. Since no affidavit has been filed by the detaining authority explaining the reasons for the delay caused in passing the order of detention or justifying the grounds mentioned in the order of detention and also since no satisfactorily explanation has been putforth either by the State authority or the Central authority in the respective affidavits, in view of the aforesaid judgments, the order of detention is illegal and the same cannot be sustained.

6. The petition is allowed. The impugned order of detention dated 17-10-2001 passed against the detenu is hereby quashed and set aside. The detenu Harshadkumar Virendrabhai Jain is hereby ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

radhan/